

I hereby certify that this correspondence is being filed via
EFS-Web with the United States Patent and Trademark Office
on March 25, 2010

PATENT
Docket No.: 018891-004310US
Client Ref. No.: 1000-00212US

TOWNSEND and TOWNSEND and CREW LLP

By: /chianti appling/
Chianti Appling

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Peter D. Senter et al.

Patent No.: 7,659,241

Issued: February 9, 2010

Application No.: 10/522,911

Filed: July 7, 2005

For: DRUG CONJUGATES AND
THEIR USE FOR TREATING CANCER,
AN AUTOIMMUNE DISEASE OR AN
INFECTIOUS DISEASE

Customer No.: 51535

Confirmation No.: 7034

Examiner: Christina Bradley

Art Unit: 1654

REQUEST FOR
RECONSIDERATION OF PATENT
TERM ADJUSTMENT UNDER 37
CFR § 1.705(d)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

Pursuant to 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is prompted by the Notice Concerning Calculation of Patent Term Adjustment under 35 U.S.C. § 154(b)(1)(B) involving International Applications Entering the National Stage Pursuant to 35 U.S.C. § 371 dated September 9, 2009 and by the court decision in *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538 D.D.C. 2008) which held that periods of delay under 35 U.S.C. § 154(b)(1)(A) and 35 U.S.C. § 154(b)(1)(b) overlap only if they occur on the same

calendar day or days. This request is accompanied by the fee set forth in § 1.18(e) and a statement of facts as required under 37 C.F.R. § 1.705(b)(2).

It is respectfully requested that Applicants be granted a corrected patent term adjustment of **1,080 days**.

Statement of Facts as Required under 37 C.F.R. § 1.705(b)(2)

The correct patent term adjustment is 1,080 days and not 537 days as stated on the Patent Term Adjustment History tab on PAIR and listed on the front page of U.S. Patent No. 7,659,241.

The period of adjustment under § 1.702(a) is 395 days (“A delay”).

The period of adjustment under § 1.702(b) is 740 days (“B delay”).

The period of adjustment under § 1.704(a) is 45 days (“applicant delay”).

The period of adjustment under § 1.703(f) is 1,080 days.

The Relevant Dates as Specified in 37 C.F.R. §§ 1.703(a)-(e), § 1.704 and the Adjustment Specified in 37 C.F.R. § 1.703(f)

1. § 1.703(a)

Applicants are in agreement with the Patent Office’s determination of a period of adjustment of 395 days under 37 C.F.R. § 1.703(a) indicated by the attached Patent Term Adjustment History (see *Exhibit A*).

A. Restriction Requirement

The 371(c) filing date was July 7, 2005 and a Restriction Requirement was mailed on September 27, 2007. Applicants are in agreement with the Patent Office’s determination of a period of adjustment of 385 days under 37 C.F.R. § 1.703(a)(1).

B. Non-Final Office Action

The response to the Restriction Requirement was filed on December 19, 2007. The Non-Final Office Action was mailed on April 29, 2008. Applicants are in agreement with the Patent Office's determination of a period of adjustment of 10 days under 37 C.F.R. § 1.703(a)(2).

2. § 1.703(b)

The above-referenced patent issued from a U.S. national stage application that entered the national stage in the U.S. from an international application. The Patent Office failed to issue a patent within three years of the date that the national phase commenced under 37 U.S.C. § 371(b). The period of adjustment under 37 C.F.R. § 1.702(b) is the number of days, in the period beginning on the day after the date that is three years after the date on which the national stage commenced under 35 U.S.C. § 371(b) and ending on the date the patent was issued. The national stage commenced under 35 U.S.C. § 371(b) on January 31, 2005 and the patent issued on February 9, 2010. Thus, the effective period of adjustment under 37 C.F.R. § 1.702(b) is **740 days** as shown in the table below.

Filing Date (371(c))	National Phase Commencement (371(b))	3-Year Date	Issue Date	Days Over 3- Years
July 7, 2005	January 31, 2005	January 31, 2008	February 9, 2010	740 days

3. § 1.703(c)-(e)

There are no relevant dates as specified under §§ 1.703(c)-(e).

4. Overlapping periods under § 1.703(a)-(e)

Applicants have calculated overlapping periods in accordance with *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538 D.D.C. 2008). Periods of delay under 35 U.S.C.

§154(b)(1)(A) and 35 U.S.C. §154(b)(1)(B) overlap only if they occur on the same calendar day or days (see *Wyeth*). There are overlapping periods under § 1.703(a)-(e).

A. Mail Non Final Rejection

The 10 days of delay, under 37 C.F.R. § 1.703(a), associated with the mailing of the Non-Final Rejection on April 29, 2008, overlaps with the period of adjustment under 37 C.F.R. § 1.702(b).

5. Reduction of Period of Adjustment of Patent Term Adjustment under 37 C.F.R. § 1.704

Applicants do not dispute the calculation by the Patent Office of the period of adjustment under § 1.704(a) as a total of 45 days indicated by the attached Patent Term Adjustment History (see *Exhibit A*).

A. Information Disclosure Statement

An Information Disclosure Statement was filed on December 21, 2007, after the response to Restriction Requirement was filed on December 19, 2007. Applicants are in agreement with the Patent Office's determination of a period of adjustment of 2 days under 37 C.F.R. § 1.704(a).

B. Response to Non-Final Office Action

The Non-Final Office Action was mailed on April 29, 2008. The initial response to the Non-Final Office Action was filed on July 30, 2008. Applicants then filed a supplemental response to the Non-Final Office Action on August 29, 2008. Applicants are in agreement with the Patent Office's determination of a period of adjustment of 31 days under 37 C.F.R. § 1.704(a).

C. Amendment After Notice of Allowance

Applicants filed an Amendment after Notice of Allowance on October 2, 2009. The Examiner mailed the response to the amendment on October 13, 2009. Applicants are in agreement with the Patent Office's determination of a period of adjustment of 12 days under 37 C.F.R. § 1.704(a).

6. § 1.703(f)

The period of adjustment under 37 C.F.R. § 1.703(f) is as follows:

Type "A delay:"	395 days
Type "B delay:"	740 days
"A" and "B" overlap:	10 days
Applicant delay:	45 days
<u>Adjusted:</u>	<u>1,080 days</u>

Terminal Disclaimer

U.S. Patent No. 7,659,241 is not subject to a terminal disclaimer.

Statement under 37 C.F.R. § 1.705(d)

The instant patent issued on February 9, 2010, and Applicants submit that this request for reconsideration of patent term adjustment is timely as it is being filed within the two-month time frame set forth under 37 C.F.R. § 1.705(d).

Patent Term Adjustment Determination

Applicants are entitled to 1,080 days of patent term adjustment, *i.e.*:

[1,135 days (A delay + B delay) minus 10 days (overlap days)] minus [45 days (applicant delay)]

Peter D. Senter et al.
Application No.: 10/522,911
Page 6

PATENT

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

Please charge the fee set forth in 37 C.F.R. § 1.18(e) (\$200.00) to Deposit Account No. 20-1430. Please charge any necessary additional fees or credit any overpayments to the above-noted Deposit Account.

Respectfully submitted,



Mark H. Hopkins, Ph.D.
Reg. No. 44,775

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: (925) 472-5000
Fax: (415) 576-0300
M3H:lml